

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. (This is a GIL.)

June 23, 2005

Dear Xxxxx:

This letter is in response to your letter dated November 1, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I work for a STATE based Software Company that tracks Banking/Lending information for the automobile Leasing/Purchase industry. I am requesting any help you can provide me in acquiring taxation information regarding automobile leases / purchases in your state. I have compiled a small questionnaire to make the process easier:

- 1.) Amount of sales tax?
- 2.) Is this the same for balloons?
- 3.) Is there a local county sales tax?
- 4.) Is there a city sales tax?
- 5.) Is the sales tax based on a percentage of monthly payments or on the selling price?
- 6.) When leasing, is a leased trade-in and/or a purchased trade-in taxable?
- 7.) When purchasing, is a leased trade-in and/or a purchased trade-in taxable? Is this the same with Balloons? (Briefly a balloon is an option that gives the

customer low payments like a lease, but give the customer the Option to Purchase the vehicle at the end of the term.)

- 8.) For lease and purchase. Is minus/negative equity added to sales cost for tax calculations?
- 9.) For lease and purchase. Is the down payment taxable?
- 10.) For lease and purchase. Is a Dealer Documentation Fee (a fee charged by the Dealer for the preparation, handling, organizing, etc. of documents) taxable? Same for Lender/Bank Documentation Fees (a fee charged by the Bank for the preparation, handling, organizing, etc.)?
- 11.) For lease and purchase. Is Rebate taxable?
- 12.) For lease and purchase, are manufacture warranties and extended warranties taxable?
- 13.) Does your state have personal property tax on motor vehicles?
- 14.) Is there any other taxation that applies to leases?
- 15.) Is there any other taxation that applies to purchases?
- 16.) Is there any taxation that applies to balloons? (Down payment tax, doc. fee tax, rebate tax, warranty tax, etc.)

DEPARTMENT'S RESPONSE:

The State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases.

A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. For general information related to conditional sales, please refer to 86 Ill. Adm. Code 130.2010. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax (6.25%) and local occupation taxes, if any. For items that are required to be titled and registered with an agency of this State's government, the entire amount of tax is due "up-front" before the item can be titled or registered. To determine if a local occupation tax is incurred on a sale in a county or municipality, please see ST-25 Sales Tax Rate Reference Material on the Department's internet website under the heading "Publications."

A true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, the lessors of the property being used in Illinois would be the parties with Use Tax obligations. The lessors would either pay their suppliers, if their suppliers were registered to collect Use Tax, or would self-assess and remit the tax to the Department. If the lessors already paid taxes in another state with respect to the acquisition of the tangible personal property, they would be exempt from Use Tax to the extent of the amount of such tax properly due and paid in such other state. See subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not “pass through” their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements. The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq.

There are some limited exceptions to the general rule described in the preceding paragraph. There is an exemption from Retailers' Occupation Tax for sales of tangible personal property to lessors who lease that property to governmental bodies under leases of one year or longer. See 86 Ill. Adm. Code 130.2012. In addition, certain purchases of tangible personal property by persons who are leasing that property to exempt hospitals that have been issued an E-number by the Department are exempt from Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2011. This exemption applies to sales of two different types of tangible personal property. The first is computers and communications equipment utilized for any hospital purpose. The second is sales of equipment that are used in the diagnosis, analysis, or treatment of hospital patients.

In addition, please see 86 Ill. Adm. Code 130.2125 for information regarding manufacturers' rebates, and General Information Letter ST-03-0202-GIL, which may be found on the Department's internet website under the heading of “Legal Research.”

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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